Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

AT&T CORP. COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING RELEASED AUGUST 18, 1997

Pursuant to Section 1.415 of the Commission's Rules and its Third Order on Reconsideration and Further Notice Of Proposed Rulemaking,[1] released August 18, 1997 ("FNPRM"), AT&T Corp. ("AT&T") submits these comments concerning whether a carrier may use unbundled dedicated transport and shared transport in conjunction with unbundled tandem switching to originate or terminate interexchange traffic to the local exchange customers of other providers.

In its Third Order on Reconsideration, the Commission confirmed that Section 251(c)(3) of the Communications Act of 1934, as amended ("Act"), requires incumbent

[1] Third Order on Reconsideration and Further Notice Of Proposed Rulemaking, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 97-295, released August 18, 1997 ("FNPRM").

LECs to provide to requesting carriers shared transport as an unbundled network element ("UNE"). The Order also made clear that a requesting carrier may use shared and dedicated transport, like other UNEs, to provide exchange access services for the interexchange traffic of that carrier's local exchange customers. Carriers that use UNEs to provide exchange access in this fashion are not required to pay access charges to the incumbent LEC, and may assess access charges on interexchange carriers for the origination and termination of interexchange calls.

The FNPRM issued with the Third Order on Reconsideration asks whether a carrier also may use unbundled dedicated transport and shared transport in conjunction with tandem switching to originate or terminate interexchange traffic for the local exchange customers of other providers. As the Commission has previously held, the plain language of Section 251(c)(3) confirms that a requesting carrier may use UNEs to provide any telecommunications service, including exchange access, and does not otherwise restrict the use of unbundled elements in any fashion. Permitting carriers to use UNEs to provide exchange access services, without regard to whether that carrier also provides local services to a given customer, will also further the pro-competitive purposes of the Act, as well as the Commission's plan to achieve market-based access reform through the availability of UNE-based competition.

I. THE PLAIN LANGUAGE OF SECTION 251(c)(3) PERMITS ANY CARRIER TO USE UNBUNDLED TRANSPORT TO PROVIDE EXCHANGE ACCESS SERVICE WITHOUT REGARD TO WHETHER THAT CARRIER IS ALSO A CUSTOMER'S LOCAL SERVICE PROVIDER

Section 251(c)(3) confirms that a carrier may use UNEs to provide exchange access and interexchange services, without regard to whether, and to whom, that carrier provides local exchange services. That section provides, in relevant part, that incumbent LECs have

> The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.[2]

Thus, the Commission concluded that carriers may use UNEs "for the purpose of providing exchange access to themselves in order to provide interexchange services to consumers," and that this conclusion is

> compelled by the plain language of the 1996 Act. As we observed in the NPRM, section 251(c)(3) provides that requesting telecommunications carriers may seek access to unbundled elements to provide a 'telecommunications service,' and exchange access and interexchange services are telecommunications services. Moreover, section 251(c)(3) does not impose restrictions on the ability of requesting carriers 'to combine such elements in order to provide such telecommunications service[s].'[3]

Indeed, the Commission underscored its holding by observing that "there is no statutory basis upon which we could reach a different conclusion."[4]

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2 47 U.S.C. § 251(c)(3).

3 Local Competition Order, ¶ 356 (brackets in original). See also id., ¶ 359 ("[T]he language of Section 251(c)(3), which provides that telecommunications carriers may purchase unbundled elements in order to provide a telecommunications service, is not ambiguous. Accordingly, we must interpret it pursuant to its plain meaning...."); First Report and Order, Access Charge Reform, CC Docket No. 96-262, FCC 97-158, released May 16, 1997 ("Access Reform Order"), ¶ 337 ("Sections 251(c)(3) and 252(d)(1) ... do not restrict the ability of carriers to use network elements to provide originating and terminating access.").

4 Local Competition Order, ¶ 356. The Local Competition Order did, however, hold that the Commission had the power temporarily to impose a modified scheme of access charges on purchasers of UNEs. This transitional measure expired on June 30, 1997, and was intended to serve only as a stopgap until the Commission could address access reform and universal service issues. Id., ¶ 720. See also CompTel v. FCC, 117 F.3d 1068, 1073-75 (8th Cir. 1997) (upholding transitional imposition of access charges on UNEs).

Thus, the text of the Act does not restrict the use of UNEs to those carriers that are originating or terminating calls to their own local exchange customers. Instead, any carrier may use UNEs to provide any telecommunications service; exchange access is a telecommunications service; and, therefore, any carrier may use UNEs to provide exchange access services. Nothing in § 251(c)(3) makes the use of UNEs for any "telecommunications service" contingent upon whether a requesting carrier is a particular customer's local service provider.

This is also plain in the Commission's prior findings that unbundled local switching and the unbundled loop cannot, as a practical matter, be used to provide access services by any carrier other than an end user's local service provider. Specifically, in the Local Competition Order and the Order on Reconsideration[5] in that same proceeding, the Commission recognized that a requesting carrier obtains the exclusive right to use a network element, and can employ it to offer any "telecommunications service." However, the carrier that obtains the right to use the local switching and loop elements cannot use those facilities to provide only exchange access, because if it did so the customer served by those elements would not be able to obtain local exchange service. Thus, the Order on Reconsideration held that "a carrier that purchases the unbundled local switching element to serve an end user effectively obtains the exclusive right to provide all features, functions, and capabilities of the switch, including switching for exchange

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[5] Order on Reconsideration, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, 11 FCC Rcd. 13042 (1996), ("Order on Reconsideration").

access and local exchange service, for that end user."[6] Similarly, a local service provider purchasing an unbundled loop necessarily would "provide to an end user all of the services that the end user requests."[7] Another carrier simply could not purchase those elements solely for the purposes of providing exchange access services.

Nothing in those orders, however, finds any limitation in § 251(c)(3), or elsewhere in the Act, on a carrier's ability to use UNEs to provide access services for a customer to which it does not provide local exchange services. Instead, the Commission relied simply on the nature of the network elements at issue – local switching and loops – and the inherently indivisible use of those elements to provide both exchange and exchange access services. To the extent that there is no such inherent limitation on the use of other network elements, those elements could be used exclusively for exchange access without affecting customers' ability to obtain local exchange service.

II. THE UNRESTRICTED USE OF UNEs TO PROVIDE EXCHANGE ACCESS SERVICES WILL FURTHER THE COMMISSION'S PLAN TO ACHIEVE "MARKET-BASED" ACCESS CHARGE REFORM

The Access Reform Order recognized that access charges currently are not, as required by the Act, based on LECs' forward-looking costs. However, the Commission explicitly

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6 Id., ¶ 11. See also id., ¶ 13 ("a carrier that purchases an unbundled switching element will not be able to provide solely interexchange service or solely access service to an interexchange carrier").

7 Id., ¶ 12. See also Local Competition Order, ¶ 357 ("if there is a single loop dedicated to the premises of a particular customer and that customer requests both local and long distance service, then any interexchange carrier purchasing access to that customer's loop will have to offer both local and long distance services").

refused to promulgate cost-based prices for access, determining that "the public interest is best served by permitting emerging competition to affect access charge rate levels."[8] In this regard, the Commission explicitly chose to "rely on the availability of unbundled network elements to place market-based downward pressures on access rates...."[9] Thus, the order observed that "To the extent that any implicit subsidies remain in interstate access charges .... our market-based approach will have the effect of making those implicit subsidies subject to being competed away as competitors offer comparable services at prices that do not include the subsidies."[10] Allowing the unfettered use of UNEs in the provision of exchange access services will further this goal.

Permitting carriers to use unbundled transport to provide competitive access services for the interexchange traffic of other providers' local exchange customers would allow carriers more quickly and broadly to use UNEs to begin the process of "compet[ing]" away access rents. Carriers could develop and market to interexchange carriers local transport access offerings in competition with the incumbent LEC that would succeed or fail on their own merits. In this way, the availability to interexchange carriers of efficient and cost-effective local transport arrangements would not be artificially limited by a particular access provider's own gains in the

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8 Access Reform Order, ¶ 269.

9 See id., ¶ 199.

10 Id., ¶ 263.

local exchange market. This would be wholly in keeping with the Commission's own prior efforts to foster competition in the provision of local transport access services.[11]

There is, moreover, no real risk that the use of unbundled transport to provide exchange access services would harm the ILECs. Any access revenues that incumbent LECs may lose as a result of this use of shared and dedicated transport would be a small fraction of the more than $16 billion that they now collect annually, on an interstate basis alone, for switched and special access services. As a preliminary matter, interexchange carriers could not use UNEs to displace all access services. The local service provider (which will be the ILEC in the vast majority of cases, at least in the near term) will retain the exclusive right to levy access charges associated with local switching and the loop, as well as to collect any access fees from end-users. In addition, ILECs will obtain revenues from the sale of unbundled transport at prices that will cover their costs plus a reasonable profit.[12] Thus, permitting unbundled transport to be used in the provision of exchange access services, regardless of each customer's local service provider, would allow the industry and consumers to begin to benefit from market-based access reform, without creating any risk of significant, near-term erosion of ILEC access revenues.

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11 See Report and Order and Notice of Proposed Rulemaking, Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, 7 FCC Rcd. 7369 (1992), vacated in part, Bell Atlantic v. FCC, 24 F.3d 1441 (D.C. Cir. 1994). The Commission also sought to encourage transport competition in the Access Reform Order, which amended the Commission's rules to limit application of Transport Interconnection Charges ("TIC") to traffic delivered using the ILEC's local transport services. See id., ¶ 240; 47 C.F.R. § 69.155(c).

12 See 47 U.S.C. § 252(d).

III. IXCs SHOULD BE ABLE TO OBTAIN EFFICIENT LOCAL TRANSPORT ACCESS ARRANGEMENTS FROM MULTIPLE COMPETING ACCESS PROVIDERS

Finally, the FNPRM requests comments as to whether, in the event the Commission determined that only a customer's local service provider could use unbundled transport to provide exchange access for that customer, it would be technically feasible for IXCs to identify terminating toll traffic according to the local service provider serving the customer to whom the traffic terminated. IXC switches cannot today sort terminating toll traffic by local service provider. While it presumably would be technically feasible -- given sufficient time, resources and industry standards work -- to develop this capability, requiring such sorting would be unnecessary and unwise.

First, to require IXCs to sort terminating traffic by local service provider (rather than by switch) would destroy the efficiencies inherent in existing access arrangements by requiring IXCs to utilize separate trunk groups for each local service provider serving customers at an end office, even when the toll traffic of those customers could, for example, most efficiently be carried over a single trunk group. Second, the design and construction of the facilities necessary to sort traffic by local service provider necessarily would force interexchange carriers to divert resources now engaged in efforts to enter local exchange markets, and thereby would delay achievement of the Act's fundamental goal of making local markets competitive.[13] Third, such a

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[13] For example, in order to sort terminating traffic by local service provider, it appears that IXCs would have to alter all of their routing facilities, most probably to accommodate 10-digit routing, rather than routing calls based on their first 6 digits (that is, by NPA-NXX) as is done today. In addition, IXC routing tables would apparently have to be linked to

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capability is entirely unnecessary. Interexchange carriers can use local transport arrangements to carry the traffic of the end users of multiple providers to the ILEC end office switch, and those providers can then use unbundled local switching and the unbundled loop to provide the associated terminating access services over those facilities.

In contrast, allowing unbundled transport to be used in the provision of exchange access services, regardless of each customer's local service provider, would foster competition and efficient use of the ILEC network, and allow new entrants to share in the ILECs' economies of scale, scope, and density. As described above, interexchange carriers should be able to obtain local transport from whichever provider (and in whatever manner) they deem best, without artificial limitations on the availability of efficient and cost-effective local transport access offerings. This would allow interexchange carriers and their customers to benefit from the market-based elimination of the distortions caused by the ILECs' existing supracompetitive rates for local transport access services.

To allow interexchange carriers to take advantage of these benefits, however, no limitations can be placed on an interexchange carrier's ability to combine the traffic of customers served by multiple local exchange carriers on whatever local transport access arrangements it obtains. This is particularly critical in the case of the dedicated transport services that interexchange carriers use to connect to the ILEC network. Interexchange carriers must be able

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> LEC systems in a manner that would allow calls to be routed to the appropriate LEC trunk group each time a customer switched local service provider.

to use dedicated facilities, regardless of access provider, for the transport of traffic of the customers of multiple local service providers to and from ILEC facilities; otherwise interexchange carriers will lose existing network efficiencies and incur the costs and distractions of the network modifications described above.

CONCLUSION

For the reasons stated above, the Commission should find that a carrier may use unbundled network elements to provide exchange access services without regard to that carrier's provision of exchange services to any given customer.

Respectfully submitted,

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